JC Electric LLC and its alter ego JC Electrical Enterprises LLC *and* International Brotherhood of Electrical Workers, Local Union No. 575. Case 09–CA–076253

September 13, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that JC Electric LLC (Respondent JCE) and its alter ego JC Electrical Enterprises LLC (Respondent JCEE; collectively, the Respondents), have failed to file an answer to the complaint. Upon a charge filed on March 9, 2012,[1] by International Brotherhood of Electrical Workers, Local Union No. 575 (the Union), the Acting General Counsel issued a complaint on June 28 against the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the Act. The Respondents failed to file an answer.

On July 27, the Acting General Counsel filed with the Board a Motion for Default Judgment and a Memorandum in Support of Motion for Default Judgment, with exhibits attached. Thereafter, on July 31, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by July 12, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated July 16, notified the Respondents that unless an answer was received by July 23, a motion for default judgment would be filed.[2] Nevertheless, the Respondents failed to file an answer.

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondents, limited liability corporations, with offices and places of business in Vanceburg, Kentucky (the Respondents' facilities), have been engaged as electrical contractors in the construction industry performing installation, maintenance, and repair for industrial and commercial customers.

During the 12-month period preceding issuance of the complaint, the Respondents, in conducting their operations described above, performed services valued in excess of $50,000 in States other than the Commonwealth of Kentucky.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Respondent JCE and Respondent JCEE have had substantially identical management, business purpose, operation, equipment, customers, and supervision.

On about September 14, 2011, Respondent JCEE was established by Respondent JCE as a disguised continuance of Respondent JCE.

[1] All dates are in 2012, unless otherwise specified.

[2] As set forth in the Acting General Counsel's Memorandum in Support of Motion for Default Judgment, on July 23, John Carver (the owner of Respondent JCE) called counsel for the Acting General Counsel, made several inquiries concerning the complaint, and indicated that he needed to speak with his attorney and would need until July 25 before he could answer the complaint. Counsel for the Acting General Counsel, through an email and a letter sent by certified mail on July 24, advised Carver that the Region would grant him an extension of time to file his answer until the end of the day July 25, but that no further extensions would be granted beyond that day. On July 25, Carver emailed counsel for the Acting General Counsel indicating that his attorney would contact counsel for the Acting General Counsel on that day. As of the date of the Acting General Counsel's motion, the Respondents' attorney had not contacted counsel for the Acting General Counsel.

Based on the operations and conduct described above, Respondent JCE and Respondent JCEE are, and have been at all material times, alter egos within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondents within the meaning of Section 2(11) of the Act and agents of the Respondents within the meaning of Section 2(13) of the Act:

John Carver	Owner, Respondent JCE and General Manager/Registered Agent, Respondent JCEE
Brittany Danielle Applegate	Owner, Respondent JCEE

The employees of the Respondents, as set forth in article III, section 3.07(A) of the Inside Construction Agreement (the unit), constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

About January 14, 2008, Respondent JCE entered into a Letter of Assent whereby it authorized Central Ohio Chapter, NECA, Portsmouth, Ohio Division (NECA) as its collective-bargaining representative and agreed to comply with and be bound by the collective-bargaining agreement effective January 16, 2008, and all subsequent collective-bargaining agreements between the Union and NECA, unless Respondent JCE provided the Union and NECA with timely written notice to terminate.

About January 14, 2008, by virtue of the conduct described above, Respondent JCE, an employer engaged in the building and construction industry as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

About December 8, 2010, a majority of the unit described above designated the Union as their exclusive collective-bargaining representative and, at all times since that date, the Union has been recognized as the representative by Respondent JCE.

Respondent JCE's recognition of the Union, as described above, has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period May 28, 2012, to June 1, 2014 (the 2012–2014 collective-bargaining agreement).

At all times since December 8, 2010,[3] based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Based on the operations and conduct described above, Respondent JCEE is bound to the 2012–2014 collective-bargaining agreement.

Since about November 21, 2011, the Respondents have withdrawn recognition of the Union as the exclusive collective-bargaining representative of the unit and, at all times since that date, have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about November 21, 2011, the Respondents have repudiated the 2012–2014 collective-bargaining agreement, and at all times since that date, have failed and refused to adhere to that agreement.

On about January 13, 2012, the Union requested, in writing, that Respondent JCE furnish the Union with the information described in attachment A of the complaint.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about January 22, 2012, Respondent JCE has failed and refused to furnish the Union with the information it requested as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees within the meaning of Section 8(d) of the Act, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action

[3] Although the complaint lists this date as December 8, 2012, it is clear from the context of the complaint that this is an error and the correct date is December 8, 2010.

designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union, repudiating the provisions of the 2012–2014 collective-bargaining agreement, and failing, since about November 21, 2011, to continue in effect all the terms and conditions of the 2012–2014 collective-bargaining agreement, we shall order the Respondents to recognize and bargain with the Union, on request, as the exclusive collective-bargaining representative of the employees in the unit and to honor and comply with all the terms and conditions of the 2012–2014 collective-bargaining agreement, and any automatic renewal or extension of it. We shall also order the Respondents to make their unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondents' unlawful conduct. Backpay shall be computed in the manner set forth in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).[4] In the event that the 2012–2014 collective-bargaining agreement provides for contributions to pension and benefit funds, we shall order the Respondents to make all contractually-required contributions to these funds that they have failed to make since about November 21, 2011, including any additional amounts due the funds on behalf of unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). We shall further order the Respondents to reimburse unit employees for any expenses ensuing from the Respondents' failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[5]

In addition, having found that the Respondents violated Section 8(a)(5) and (1) by failing to provide the Union with necessary and relevant information, we shall order the Respondents to furnish the Union with the information requested on January 13, 2012.

ORDER

The National Labor Relations Board orders that the Respondents, JC Electric LLC and its alter ego JC Electrical Enterprises LLC, Vanceburg, Kentucky, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union No. 575 as the exclusive collective-bargaining representative of the employees in the bargaining unit by withdrawing recognition of the Union, repudiating the 2012–2014 collective-bargaining agreement, and failing and refusing to continue in effect all the terms and conditions of the 2012–2014 collective-bargaining agreement. The bargaining unit consists of the Respondents' employees, as set forth in article III, section 3.07(A) of the Inside Construction Agreement.

(b) Failing and refusing to furnish the Union with requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain in good faith with International Brotherhood of Electrical Workers, Local Union No. 575 as the exclusive collective-bargaining representative of the employees in the unit, and honor and comply with the terms of the 2012–2014 collective-bargaining agreement, and any automatic renewal or extension of it.

[4] In the complaint, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no unlawful conduct. Further, the Acting General Counsel requests that the Respondents be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc*., 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

[5] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

(b) Make the unit employees whole for any loss of earnings or other benefits they may have suffered as a result of the Respondents' unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(c) Furnish the Union with the information it requested about January 13, 2012.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at their facilities in Vanceburg, Kentucky, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 21, 2011.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at testing to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. September 13, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union No. 575 as the exclusive collective-bargaining representative of the employees in the bargaining unit by withdrawing recognition of the Union, repudiating the 2012–2014 collective-bargaining agreement, and failing and refusing to continue in effect all the terms and conditions of the 2012–2014 collective-bargaining agreement. The bargaining unit consists of our employees, as set forth in article III, section 3.07(A) of the Inside Construction Agreement.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain in good faith with International Brotherhood of Electrical Workers, Local Union No. 575 as the exclusive collective-bargaining representative of the employees in the unit, and WE WILL honor and comply with the terms of the 2012–2014 collective-bargaining agreement, and any automatic renewal or extension of it.

WE WILL make our unit employees whole for any loss of earnings or other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL furnish the Union with the information it requested about January 13, 2012.

JC ELECTRIC LLC AND ITS ALTER EGO JC ELECTRICAL ENTERPRISES LLC